

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1767 OF 2006
AND
CRIMINAL WRIT PETITION NO.1768 OF 2006

Mr. Dilip Mehta

... Petitioner.

V/s.

Mr. Priyesh Rajendra Chhajed & Ors. ... Respondents.

Mr. P.R. Naidu, for the Petitioner.

Mr. A.S. Shitole, APP.

CORAM : A.S. OKA, J.
DATE : 22ND AUGUST 2006

P.C. :

1. Heard Shri Naidu appearing for the Petitioner in both the Petitions. As the facts of both the Petitions are identical, for the sake of convenience, reference is made to the facts of Writ Petition No.1767 of 2006. The Petitioner is an accused in a complaint under Section 138 of the Negotiable Instruments Act, 1881, filed by the first Respondent. An application was made by the Petitioner in the said complaint containing the following prayer :-

" That Power of Attorney holder Mr. Anandraj Chhajed be directed to submit his Affidavit of Evidence before the Court because the Complainant has admitted in his original complaint about that Anandraj Chhajed is having personal knowledge of entire transaction."

2. The said application was rejected by the learned Magistrate. A Revision Application was filed by the Petitioner for challenging the said order. The Revision Application has been rejected.

3. The learned Counsel appearing for the Petitioner submitted that even according to the case of the first Respondent, his Power of Attorney Holder Mr. Anandraj Chhajed is the only person who is having knowledge about the transaction which is subject matter of the complaint. He has invited my attention to various averments made in the complaint by the first Respondent. He submitted that the first Respondent - complainant is required to lead evidence of the said Constituted Attorney. He pointed out that instead of examining the Power of Attorney Holder, the first respondent has himself purported to file affidavit of examination in chief. He submitted that the first Respondent has no knowledge about the facts of the case and the Petitioner will be compelled to cross examine such a witness.

4. I have considered the submissions. The Petitioner is arraigned as an accused in the complaint filed by the first Respondent. It is for the first Respondent to decide who should be his witnesses. If the first Respondent chooses not to examine a person who is aware about the facts of the case, it is the first Respondent who is taking the risk. The effect of grant of the prayer made by the Petitioner in his application before the trial Court will be that at the instance of the accused, the Court will be compelling the complainant to examine a particular witness. If according to the

Petitioner, evidence of an important witness is withheld, it is for him to argue before the trial Court that an adverse inference should be drawn. This is the view taken by the learned Sessions Judge while rejecting the Revision Application filed by the Petitioner.

5. I find that there is no case for inference in these Petitions under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973.

6. At this stage, Shri Naidu pointed out that the learned Judge has awarded costs against the Petitioner. Considering the nature of contentions raised by the Petitioner, the trial Court would have been justified in awarding costs. In fact by the impugned order, costs are not awarded.

7. Criminal Writ Petitions are rejected.

JUDGE